

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DENNIS W. SOMERVILLE,

Petitioner,

v.

WARDEN MARTINEZ,

Respondent.

Case No. C06-5363 RJB/KLS

ORDER DENYING SECOND
MOTION FOR THE APPOINTMENT
OF COUNSEL

This 28 U.S.C. § 2254 petition has been assigned to United States Magistrate Judge Karen L. Strombom pursuant to 28 U.S. C. § 636(b)(1) and Local MJR 3 and 4. Petitioner has filed a second motion for the appointment of counsel. (Dkt. # 24). Petitioner's first motion was denied (Dkt. # 10) and upon review of the District Court, was modified and affirmed (Dkt. # 19). Having reviewed Petitioner's second motion, the Court finds, for the reasons set forth below, that it should be denied.

There is no right to have counsel appointed in cases brought under 28 U.S.C. § 2254 unless an evidentiary hearing is required, because the action is civil, not criminal, in nature. See Terravona v. Kincheloe, 852 F.2d 424, 429 (9th Cir. 1988); Brown v. Vasquez, 952 F.2d 1164, 1168 (9th Cir.

1 1992); and Rule 8(c) of the Rules Governing Section 2254 Cases in the United States District Courts.
2 An evidentiary hearing has not been granted in this case and the claims in the petition are adequately
3 set forth and articulated. Petitioner has not demonstrated that an evidentiary hearing is necessary or
4 that he is entitled to one. It is apparent that the issue before the court – whether the petition is clearly
5 time-barred – may be resolved solely by reference to the state court record. *See, e.g., Campbell v.*
6 *Wood*, 18 F.2d 662, 679 (9th Cir.) (en banc), (cert, denied, 114 S. Ct. 2125 (1994)).

7 Accordingly, Petitioner's motion for the appointment of counsel (Dkt. # 24) is **DENIED**.

8 The Clerk is directed to send copies of this order to Petitioner and counsel for Respondent.

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10 DATED this 29th day of December, 2006.

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14 Karen L. Strombom
15 United States Magistrate Judge
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